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THE SUPERINTENDENT AND GRIEVANCE PROCEDURES.

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Grievance adjustment between teachers and administrators is viewed as a misunderstood process. The problem is treated under four main headings: (1) Purposes and characteristics of an effective grievance procedure, (2) status of grievance procedures in education, (3) relationship of grievance procedures to professional negotiation procedures, and (4) pertinent topics related to the grievance adjustment process. Appropriate grievance procedures are regarded as essential to the effective operation of a school system, whether or not a professional negotiation procedure is in effect. Related topics include the small-sized school system, the "open door" policy, the grievance rate, roles of participants in the grievance process (principal, arbitrator, school board, grievance representative), and the question of exclusive representation. (JK)

THE SUPERINTENDENT AND GRIEVANCE PROCEDURES

Convention of American Association of School Administrators
Atlantic City, New Jersey
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Two years ago at this time, when I delivered an AASA speech on the subject of professional negotiation, I stated that I did not think there was a person present or, in fact, attending the convention, who harbored any serious doubt in his mind concerning the importance of professional negotiation. I venture to say this is emphatically not the case with respect to grievance procedures. Although the subject is of the utmost importance, one would have to say that grievance adjustment is probably the most underrated, undervalued, underutilized, underscrutinized, and most misunderstood process in the entire area of educational administration today.

Pathetically little has been written on the subject of grievances in the literature of educational administration; on the other hand, there is ample material to be found in texts dealing with personnel management in both the private and public sectors of our economy. My prediction is that, as collective negotiation between teachers and boards of education increases in depth and scope in the months and years ahead, so shall the incidence of grievance procedures. Further, as sophistication in collective negotiation grows, so shall the use of grievance procedures for, as we shall see later, there is a far cry between the existence of a grievance procedure and its use in any consistent or meaningful manner.

In the time at our disposal this afternoon I propose to divide the presentation into four parts:

- Purposes and Characteristics of an Effective Grievance Procedure
- Status of Grievance Procedures in Education
- Relationship of Grievance Procedures to Professional Negotiation Procedures
- Pertinent Topics Related to the Grievance Adjustment Process

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PURPOSES AND CHARACTERISTICS OF AN EFFECTIVE GRIEVANCE PROCEDURE*

We can furnish a very simple definition of a grievance procedure by saying that its main purpose is to enable teachers to express a complaint about established school policies or the administration of a written agreement without jeopardizing their job and with the full assurance that a complaint will receive prompt attention by persons who can remedy the complaint.

The careful observer, taking a backward glance at the evolution of staff relationships and contract negotiations over the past several years, can recognize these three relatively discrete aspects of the evolutionary process:

(a) Procedural emphasis phase--This phase relates to the illusionary attempts of early administrators to achieve at least a semblance of democracy in operating the schools. We see in this phase of the existence of "advisory councils," "superintendents' advisory committees," the "open door" concept, and many other similar type devices which gave the appearance of jointly developed policies that, in reality, generally resulted in unilaterally developed school policies. Such "councils" generally dealt with such important topics as teacher lateness, printed forms and procedures, and merit pay.

(b) Policies phase--This stage in the evolutionary process actually involved the joint development of educational policies. It called for the development of professional negotiation procedures on level one and level two; sometimes, a level three agreement was developed, however for the most part these agreements were "all language and no flesh." It is much preferred of course, to the procedural emphasis phase in that it represents a sincere

*Material for this and subsequent sections of the paper has been drawn in some measure from the following publications:

1. Lieberman, Myron & Moskow, Michael. Collective Negotiation for Teachers. Chicago: Rand McNally &Co., 1966
2. Stinnett, T.M., Kleinmann, Jack H. & Ware, Martha. Professional Negotiations in Public Education. New York: MacMillan Co., 1966
3. NEA-Commission on Professional Rights and Responsibilities. The Local Education Association and Grievance Adjustment. Washington, D.C., The Association, 1966

desire on the part of teachers, administrators, and board members to resolve educational problems. However, the policies phase still has not achieved the desired level of sophistication which is to be found in the organizational phase.

(c) Organizational phase--The organizational phase is the most sophisticated, and the most crucially important, of the three stages mentioned. It actually takes policy matters out of the realm of discussion and into the action stage. In this organizational phase, the representative teachers association actually organizes itself to make educational policies workable in practice. Concomitant with this, school administrators and boards of education organize to accommodate to the policies jointly developed. Naturally, a viable grievance procedure (which could be referred to as "reality-testing") is an essential and integral aspect of the organizational phase. This particular stage in contract negotiation recognizes that the development of policy is one thing, but that making the policy work in practice is quite another.

What I have tried to emphasize thus far is that appropriate grievance procedures are essential to the effective operation of a school system, whether or not a professional negotiation procedure is in effect. We can list at least five basic purposes of a grievance procedure which might be used as a framework within which an effective policy may be developed:

1. To insure that a complaint is considered fairly, with all due speed, and without prejudice or reprisal.
2. To encourage teacher expression regarding conditions that affect him.
3. To improve the understanding of policies which affect teachers.
4. To build confidence in the sincerity of the procedure.
5. To appraise policy effectiveness in an objective market place.

We can also list rather quickly the characteristics of an effective grievance procedure. It should be noted that although grievance procedures

are to be found widely in a great variety of occupational groupings, their most striking feature is the diversity of the provisions that are essential to any appeal system. Most authorities would agree that the mere transplanting of a procedure used in one school system to another is pretty poor practice, however they would agree also that effective appeal procedures in the public school environment possess certain common properties. These are listed as follows:

1. The concept of "consent of the governed" is evident. The finished procedure grows out of the joint discussion and negotiation between representatives of the employee organization and the school district.
2. The grievance procedure is committed to written form so that it may constitute a kind of "legal base" for the agreement or contract.
3. A file of decisions reached at all steps in agreement procedures is maintained in order to serve as procedents for future cases. Further, precedential decisions are routinely communicated to appropriate parties.
4. An impartial third party, or arbitrator, is available to hear and resolve agreements impasse. All parties recognize this need for an objective review.
5. Included in the grievance procedure are specific provisions that safeguard the grieving individual from prejudice and reprisal of any sort.
6. The grievance procedure encourages resolution of the complaint as near to the point of origin as possible. A large proportion of settlements within the first two steps of a three or four step procedure is considered realistic.
7. The aggrieved party can obtain the assistance and support of his organization if he chooses.
8. A building level administrative bypass is provided if valid reasons can be given to support such an action by the aggrieved party.
9. Grievance subject matter is defined clearly. In general, one could categorize complaints in the following way: Teaching load and class

size; teacher assignment and transfer; promotion; facilities; equipment and supplies; salaries and fringe benefits; teacher evaluation and professional growth.

With these "basics" to serve as a foundation for our discussion, we may now deal with other important aspects of grievance procedures.

STATUS OF GRIEVANCE PROCEDURES IN EDUCATION

We can present a very vivid picture of the status of grievance procedures in public education very quickly and very simply. The NEA Research Division recently completed a study (Formal Grievance Procedures for Public School Teachers, 1965-66, Research Report 1967-R10, NEA Research Division) which surveyed the formal grievance procedures in effect for public schools teachers during the 1965-66 school year. The survey included all school systems in the United States with pupil enrollments of 12,000 or more -- 374 school systems in all.

If you haven't guessed by now, the results of the survey were somewhat disappointing. To begin with, it was found that only a third (34.5%--129) of the school districts had adopted formal grievance procedures. While this in itself might be considered disappointing, even more disappointing were the other facts turned up by the study.

Of the 129 school districts reporting the existence of a formal, written grievance procedure, nearly a third (41 systems) reported that the procedure had never been used. When the question was asked "How many grievance processings have been initiated in the past two years?" 37.2% of the systems listed one to five grievances; 3.9% of the systems listed six to ten grievances; 2.3% of the systems listed eleven to fifteen grievances. Only two school systems (or 1.6%) stated that twenty-one or more grievances had been initiated during the previous two years.

One might say, then, that the status of grievance procedures in public education, at least during the 1965-66 school year, is nothing to which we can point with pride. (We might even "view with alarm!") We will talk about what a realistic

grievance rate should be a little bit later in the presentation.

RELATIONSHIP OF GRIEVANCE PROCEDURES TO PROFESSIONAL NEGOTIATION PROCEDURES

The principle involved here may be stated very succinctly: every written collective negotiation agreement should be accompanied by a grievance procedure, but not every grievance procedure necessarily need accompany a collective negotiation procedure. In effect, there should be a grievance procedure in every school district, with or without the collective negotiation agreement.

Confusion often exists concerning the relationship of grievance procedures to professional negotiation. Remember that a grievance is a claim based upon an event or condition under which an employee works, allegedly caused by misinterpretation or inequitable application of an established policy. Professional negotiation is the process by which such policy is formulated and established. A grievance policy, then, is a most necessary concomitant of any negotiation procedure, since it provides for the equitable adjudication of any alleged injustices to an individual or group arising from the interpretation or application of policy, or from the day-to-day management of school affairs. Quite significantly, even in the absence of negotiation laws many states have enacted specific statutes pertaining to the processing of school employee grievances.

Another type of confusion sometimes exists; it is important to recognize that the devices appropriate to resolving negotiation impasse are often totally inappropriate in resolving grievance impasse. In negotiation, the predominant emphasis is to facilitate accommodation and compromise. In grievance impasses, the predominant emphasis is to devise a manner of requiring the parties to follow their owns rules. Arbitration, then, either advisory or binding, is favored as a grievance impasse device; mediation is considered to be the most desirable negotiation impasse device. The distinction between the two is crucial, and should be understood by all involved in staff relationships.

While on the subject of the relationship between grievances and negotiations, school administrators and school boards should know that organizational grievance

losses,(that is, grievance issues which have consistently been lost (or "ruled against") by the employee organization) can be expected to signal future negotiation priorities for that organization. Obviously, if an employee organization consistently loses on the interpretation of a particular policy, the organization will attempt to have the policy changed during the next negotiation session.

PERTINENT TOPICS RELATED TO THE GRIEVANCE ADJUSTMENT PROCESS

There are many topics or issues, both large and small, related to grievance procedures which bear a certain amount of discussion. On some of the topics there is confusion; on others there is misunderstanding; on still others there is disagreement. Obviously, there are no final answers. It is important, however, to get the issues out on the table at least--and to discuss them thoroughly.

The Small-Sized School System

It is sometimes maintained that small-sized school systems do not need to have any grievance procedures whatsoever. Nothing could be further from the truth. As a mater of fact, small-sized school systems are very often more in need of effective grievance procedures than are the large ones. One does not have to work for very long in the area of professional rights and responsibilities to realize that violation of individual teacher rights more often take place in small school systems than in large ones.

While smaller sized school systems may not need to establish as elaborate machinery for handling employee complaints, it is essential that aggrieved employees and those responsible for their supervision understand what steps are to be taken when problems arise. This most definitely requires a written grievance procedure. Any school system, irrespective of size, which has a system of written personnel policies, needs a grievance procedure to test these policies in a reality-setting. Moreover, I refuse to believe that in this day and age there could be any school system with twenty or more teachers without a comprehensive set of written personnel policies. If there is such a school system, I would respectfully suggest that it gradually begin making its way into the Twentieth Century.

The "Open Door" Policy

A common attitude of some school administrators is that "my door is always open and anyone can come in at anytime to discuss a problem with me. As long as we can keep things informal, why in the world do we need a formal procedure?" This attitude is particulary prevalent in the smaller school districts around the nation, however it can be found in districts employing literally thousands of employees.

The superintendent of schools who maintains such a policy is liable to find himself "hoisted by his own petard." To begin with, he may just find that people will begin taking him up on his offer. If they do so at anywhere near the normal grievance rate, he will find himself ~~faced~~ so deluged with problems that he will have precious little time for dealing with any other aspects of school administration. Moreover, administrators who maintain an open door policy are encouraging teachers to avoid open and frank problem solving approaches at the lowest level possible at which the problems can be solved. In effect, this encourages individuals to bypass their immediate superiors. While this approach may be satisfying to the chief school administrator, one can easily see the serious weakening of the principal's authority and morale under such a policy; the employee may rightfully question the necessity of discussing problems with his immediate superior when he can achieve quicker solutions by going around his superior to the top man. By permitting this type of approach the superintendent also foregoes excellent opportunities to assess the effectiveness of his "middle-management" team. In the precise words of Lieberman and Moskow: "The top-level administrator whose 'door is always open' may be well advised to shut it before he ends up doing the work of his subordinates and confusing everybody else in the process. Effective grievance procedures should, therefore, be regarded as an aid, not a hindrance to sound school administration."

The Grievance Rate

We mentioned earlier the results of research into the grievance procedure in existence during 1965-66. Only two school districts in the nation with more than 12,000 pupils in enrollment experienced the initiation of twenty-one or more

grievances during that year. Obviously, this cannot be a "true" grievance rate, and it is acutely important that we learn to discriminate between official reports of grievances and the actual level of complaints in the school environment. Obviously, the data do not indicate that there is a lack of actual grievances but, rather, a lack of officially submitted grievance complaints. One could postulate the fact that this could turn into a relatively dangerous situation, in that the backroom gossip and informal discussion of alleged grievances could actually lead to a revolt of major proportions, perhaps disguised in some other form.

The situation in education can be contrasted with careful research in the private sector of our economy that indicates a real grievance rate ranging from 2% to 60% with an average of approximately twenty grievances per 100 employees each year. Admittedly, this indicates that a good deal of business would be handled by an effective grievance procedure, however I would submit that it would be worth the trouble if personnel problems facing the school system could actually be brought out in the open and solved in a professional and procedurally sound manner.

Role of the Principal

An effective grievance procedure forces on the principal a series of behaviors that can be expected, at least initially, to be resisted strongly. It is quite understandable, therefore, that the concept of grievance adjustment might be quite unpopular at the level of individual school administration. The principal is forced to listen, to "check up the administrative line," to reply in writing, to attend upper level conferences, and to defend his actions before impartial third parties. This is not necessarily bad, since it forces a level of administrative behavior which in some cases is sorely needed. Principals, in districts with effective grievance procedures, have even been known to give up some of their traditional and cherished autonomy gladly as the grievance machinery begins to take effect. Inevitably, the principal will begin to consult before he acts.

Lest anyone think that grievances are always settled in favor of the employee, some studies have indicated that as many as 80% of grievance requests are settled in favor of the employer. Even with this poor batting average, however, if adequate

consultation and the hearing of employee complaints are present in the structure, one can anticipate a relatively low level of employee dissatisfaction. The important thing to keep in mind is the fact that employees, finally, become secure in the knowledge that at least someone will listen to their grievances. The principal, then, must be made to understand his very important role in the grievance process. Part of the superintendent's responsibility is to help him in recognizing this role, and in living up to it.

Role of Arbitration and the Arbitrator

Binding arbitration is the terminal point in approximately 95% of all grievance procedures in private employment. In private employment, the parties agree in advance to accept the arbitrator's award as binding. They also agree on the choice of an arbitrator. If they cannot reach agreement on such a person, provision is sometimes made for an impartial agency to choose the arbitrator for them.

Under Executive Order 10988, grievance procedures have become very common in Federal employment. It is interesting to note that the Federal law prohibits binding arbitration and, instead, calls for advisory arbitration. Even so, Lieberman and Moskow point out that no advisory arbitration recommendation was rejected by the head of any Federal agency during the first three years after Executive Order 10988 was issued.

Thus far, there has been relatively little use of grievance arbitration in education. However, as the incidence of collective negotiation agreements increase, as organizational rivalry continues, and as both teachers and boards of education become increasingly sophisticated in living up to contractual obligations, we may fully expect that various forms of third-party grievance arbitration will become common in education. And there should be no fear of these types of arbitration among school administrators. Remember that arbitration can be limited very strictly to interpreting written agreements or policies, and not to making policy where there is none. Moreover, the purpose of arbitration is to assure that a full effort to resolved a complaint is made in the district prior to a call for such action. Arbitration, then, should be welcomed and not feared by school administrators.

Role of the School Board

There is considerable disagreement currently as to the role of the school board in grievance adjustment. Certainly, the board must be available to hear complaints upon the request of any public employee. Most procedures, however, seem to emphasize that grievance adjustment is primarily a function of school administration rather than the policy-making body, and therefore the role of the board of education has been somewhat de-emphasized in grievance adjustment. If the school board is to be involved in making a final determination, there should be some form of advisory arbitration before the school board makes its final decision. In this way, the board will have this additional "input" before making its decision.

Role of the Grievance Representative

A good grievance procedure would indicate that the employee organization have a grievance representative in each school, or at least one representative serving two or three schools. It should be understood by one and all that a grievance representative cannot play an impartial role. This type of expectation is entirely unrealistic. Rather, the employee grievance representative should play the role analagous to that of an attorney: he will help his client in every way possible to present his case, but will turn down impossible cases that can't be won under any circumstances. In most instances, the grievance representative will let the grievance process itself prove his "client" right or wrong. The point to be made here is that impartiality cannot be seen as a feature of grievance adjustment at the lower levels. Both the grievance representative and the principal have their own "publics" to deal with. It should be noted, also, that in many effective grievance procedures the grievance representative and the principal have achieved effective ways of working together which frequently solve problems before they start moving through official channels. This very smooth type of operation obviously requires experience on both sides.

Question of Exclusivity (Role of the Exclusive Organizational Representative)

If it is assumed that the parties to a grievance are (a) the institution and

(b) an employee organization, it becomes important to ask whether there is any significance in placing this responsibility in one organization or in multiple organizations. The answer should be obvious. A grievance procedure can be an instrument for effective compliance with policy only if there is exclusivity. Multi-organizational, or individual, grievance adjustment can turn into an unholy mess! This does not mean, of course, that an employee cannot decide to pursue his grievance without recourse to the recognized organization. It does mean, however, that the recognized organization should have the option of "sitting in" on the grievance process to see that its interests are protected.

In the presence of multiple organizations, and with the right of grievance representation given to each of these organizations, one need only exercise his imagination to envision the rate of grievances that would occur. Competition among the organizations for teacher loyalty would naturally result in one organization trying to outdo the other in the rate of grievance processing. Need I say more? Authorities in the field of personnel administration agree unanimously that a grievance procedure cannot be administered effectively in the presence of multi-group competition and, therefore, in the absence of the assumption of full responsibility which an exclusive employee organization must assume. Exclusivity, therefore, can be defended on practical as well as theoretical and democratic grounds.

While on the subject of an exclusive employee organization, we cannot fail to deal with those organizations which are all-inclusive; that is, those local affiliates of the NEA which include administrative personnel in the organizations. Some serious attention must be given to ways in which the school board and superintendent may be assured that administrator members of the professional organization deal appropriately with the conflict of interest which could very well become an issue in grievance adjustment. Boards of education are beginning to insist that an administrator member of an employee organization not be able to hear or rule on a complaint of a fellow member of his organization.

Another point to be made here is that the grievance procedure can be a two-way street. A problem that will need to be dealt with shortly is that which arises when the employee organization violates the agreement. The major emphasis at this time has been the means sought to remedy administrative error. The next logical question is What should be done when there is a complaint concerning the failure of the organization to meet its responsibilities under the agreement? This game is sometimes called "Don't muddy the water, because some day you may have to drink it!" It should be noted that these matters, also, can be handled within the framework of an effective grievance procedure. In such cases, complaints against the organization are generally entered at a point in the procedure immediately preceding arbitration.

I hope that the role of the superintendent of schools has been relatively clear in all of the preceding discussion. Obviously, his prime responsibility in this area is to see to it that a grievance procedure functions effectively and with full fidelity to the policy jointly established. Obviously, too, the superintendent of schools (or his representative) should be the step in the grievance procedure immediately preceding arbitration. It is important, too, for the superintendent not to fear a grievance procedure but, rather, to welcome it as an aid in effective personnel administration. All that I have said should make it abundantly clear that there must be a very specific assumption of centralized authority in the effective management of a school system, and that a good grievance procedure serves to strengthen the administrative line and require a degree of responsible centralized authority rather than undermining this authority.

Teachers are not asserting a right to run the schools in asking for the adoption of effective grievance procedures. They are asserting a right to expect official policies to be administered and interpreted fairly and equitably. It might take a good deal of self confidence on the part of administrators to welcome this type of approach to school administration, however I firmly believe that, once entered into, the process can be a satisfying one for all concerned. More

important, perhaps, an effective grievance procedure will greatly contribute to more effective personnel administration.

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